

APPEAL NO. 022893
FILED DECEMBER 19, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on October 9, 2002. The hearing officer resolved the sole disputed issue by deciding that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the 10th compensable quarter. The claimant appealed on sufficiency grounds. The claimant also argued that the narrative report requirement of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4)) was inconsistent with what was required by the statute at Section 408.143, and violative of due process of law. The respondent (self-insured) responded, requesting affirmance.

DECISION

Affirmed.

We first address the claimant's legal argument of a conflict between the rule and the statute and the due process argument. We rejected these same arguments in Texas Workers' Compensation Commission Appeal No. 022057, decided September 24, 2002, and Texas Workers' Compensation Commission Appeal No. 001607, decided August 21, 2000, stating as follows:

We have stated many times previously that the Appeals Panel does not resolve constitutional questions. The claimant may feel that raising these issues before the Appeals Panel is necessary to preserve them for judicial review. Whether this is the case or not is a question for the courts, as is the constitutionality of Rule 130.102(d). The claimant argues that Rule 130.102(d) is inconsistent with the 1989 Act and its adoption was improper under the Administrative Procedures Act. These are also issues beyond the scope of our review, but matters for the courts to consider. We will consider the arguments of the claimant upon which we have authority to rule, which are those dealing with whether there is sufficient evidence to support the factual findings of the hearing officer.

The hearing officer did not err in determining that the claimant was not eligible for 10th quarter SIBs. The parties stipulated that the claimant sustained a compensable injury on _____, and that she had a 23% impairment rating. The hearing officer found that the claimant did not return to work during the qualifying period for the 10th quarter as a direct result of her impairment. The claimant testified and proceeded on the theory that she was totally unable to work during the qualifying period for the 10th quarter. The hearing officer decided, however, that the claimant's medical evidence did not constitute a "narrative" as required by the rule (as he found them conclusory), and that there were "other records," in the form of a videotape, indicating that the claimant has some ability to work.

The hearing officer is the sole judge of the weight and the credibility to be given the evidence. Section 410.165(a). The hearing officer resolved the disputed issue in the self-insured's favor. While the claimant argued a different interpretation of the evidence, we conclude that the hearing officer's determination is supported by the evidence, and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 001360, decided July 27, 2000.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**SUPERINTENDENT
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Gary L. Kilgore
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Margaret L. Turner
Appeals Judge